

REMARKS

The Office Action mailed May 22, 2003 has been received and the Examiner's comments carefully reviewed. The specification has been amended to update the priority information of the present application. Claim 26 has been amended to correct a typographical error. No new subject matter has been added. Claims 22-40 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

Rejections Under 35 U.S.C. §103

The Examiner rejected claims 22, 25, 26 and 28-40 under 35 U.S.C. §103(a) as being unpatentable over Ierulli (U.S. Patent 6,453,901) in view of applicant's own disclosure and Muchin et al. (U.S. Patent 5,718,224). Applicants respectfully traverse these rejections.

I. Claims 22, 25, 26, and 28-33

Claim 22 recites a method of supporting tissues overlying nasal passages including the step of providing a support device having a first lateral piece, a second lateral piece, and an intermediate piece. The method further includes removing the intermediate piece of the release liner to expose an intermediate portion of the engaging layer, securing the intermediate portion of the engaging layer to a midregion, and removing the first and second lateral pieces.

The Examiner asserts that Ierulli discloses the claimed device but that the release liner of Ierulli has only two portions instead of three. The Examiner relies upon the Applicants' own disclosure and Muchin to make up for the deficiencies of Ierulli.

Specifically, the Examiner states that Applicant discloses on page 20 of the present specification that 3-piece release liners were known. To the contrary, the specification states that the "release liner 14 can comprise a single section" or "a multiple section release liner." The specification then states that "suitable release liners for use with an adhesive of the engagement layer are known." This disclosure does not state or imply that three-piece release liners are known, only that release liners for use with adhesives are known. That is, release liners having a material quality such that they

releaseably detach from materials having adhesive properties are known. The specification goes on to disclose a preferred embodiment having three components. The specification does not state that the three components are known. Applicants respectfully submit that the Examiner is improperly using hindsight reconstruction and the Applicants' own disclosure as a basis for rejection.

Further, the Examiner stated that Muchin discloses that it was known to apply the central portion of the dilator to the nose first before the lateral side portions, and that it would have been obvious to use a 3-piece liner in order to selectively uncover the central region because Muchin discloses it was known to position the central portion first. Applicant respectfully submit that there is no teaching or suggestion in Muchin to provide a three-piece release liner and secure the device as recited in claim 22.

In fact, Muchin discloses a single-piece liner 52 "provided to cover the adhesive 26 of the pad 23. . . . When in use, the liner 52 is removed to expose the adhesive surface 26." Column 5, lines 60-64. Muchin teaches only a single-piece liner that is removed to fully expose the adhesive surface. Muchin simply does not teach or suggest a three-piece liner, or removing an intermediate portion of the release liner to expose an intermediate portion of the engaging layer.

Further non-obviousness is evidenced by the fact that even Ierulli does not disclose removing an intermediate portion of a release liner. Indeed, all of the embodiments of Ierulli having first and second portions of a release liner (e.g. 28) are used by removing both portions of the release liner and then applying the fully exposed adhesive surface. Column 6, lines 38-42. Applicants submit that the Examiner has relied upon the Applicants' own disclosure to improperly reconstruct the claimed invention. Therefore, Applicants respectfully request withdrawal of this rejection as applied to claim 22 and dependent claims 25, 26 and 28-33.

II. Claims 34-40

Claim 34 recites a support device having a release liner with a first removeable intermediate piece, and second and third removeable lateral pieces. The support device is configured wherein removal of the first removeable intermediate piece permits adhesion

of the lift member's midregion prior to securing the first and second ends of the lift member.

For similar reasons as discussed with regards to claim 22, Applicants respectfully submit that independent claim 34 and dependent claim 35-40 are patentable.

The Examiner also rejected claims 22 and 31-33 under 35 U.S. C. 103(a) as being unpatentable over Muchin in view of applicant's own disclosure. In light of the comments above regarding Muchin and Applicants' own disclosure, Applicants submit that claims 22 and 31-33 are patentable.

Double Patenting

Claims 34-36 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,352,548. Applicants respectfully disagree that the structural limitations of claims 34-36 are not patentably distinct from claim 3 of U.S. Patent 6,352,548.

Applicants note that claim 34 does not recite a carrier layer releasably mounted to a surface layer, as recited in claim 3 of U.S. Patent 6,352,548. Further, claim 34 recites that removal of a first removeable intermediate piece of a release liner permits adhesion of the lift member's mid-region prior to securing the first and second ends of the lift member. Claim 3 of U.S. Patent 6,352,548 does not recite this limitation or a similar limitation. Applicants therefore respectfully submit that claims 34-36 are patentably distinct from claim 3 of U.S. Patent 6, 352,548 and request withdrawal of this double patenting rejection.

Allowable Subject Matter

The Examiner objected to claims 23, 24 and 27, but indicated that claims 23, 24 and 27 would be allowable if rewritten in independent form incorporating all the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this notification.

SUMMARY

It is respectfully submitted that each of the presently pending claims (claims 22-40) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.


Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.



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Respectfully submitted,

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